

CHICAGO LEGAL CLINIC, INC.

South Chicago • Pilsen • Austin • Downtown

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October 8, 2014

Regional Freedom of Information Officer
U.S. EPA, Region 5
77 West Jackson Boulevard (MI-9J)
Chicago, IL 60604-3590

U.S. EPA Region 5 Freedom of Information Officer:

Please be advised that I represent Pilsen Environmental Rights and Reform Organization (“PERRO”). PERRO is a not-for-profit organization focused on improving the health, welfare, and safety of the public and community in and around Chicago’s Pilsen neighborhood. PERRO’S members include several residents who live near a former Burlington Northern Santa Fe rail line in Cook County, Illinois which extends approximately 0.50 miles between Station 186+79 and Station 163+50 in Chicago (“Sangamon Street Line”), and another segment that extends approximately 0.60 miles from West Cermak Road at the Colonial Brick switch (Station 157+65 to its terminus at Station 197+81). Please see Exhibit A, attached, a map depicting the locations of the Lines. Portions of this Line served a former lead and zinc smelting plant operated by Loewenthal Metals Corporation. See U.S. EPA Region 5’s investigation <http://www.epa.gov/region5/cleanup/loewenthal/>. While cleanup of the Loewenthal Site by the EPA was concluded in September 2013, PERRO members who live adjacent to the former rail line are concerned about the nature and extent of contamination on this site and the adjacent rail lines operated by Burlington Northern Santa Fe. Their concern is enhanced because of a proposal by BNSF to the Surface Transportation Board to abandon these rail lines (see: <http://www.stb.dot.gov/filings/all.nsf/%28search-74.7.162.203-932%29?OpenView&Count=5000>).

On behalf of PERRO and pursuant to the Freedom of Information Act, 5 U.S.C. §552, I request copies of all documents in the possession of U.S. EPA Region 5 regarding its actions, whether done unilaterally or with the City of Chicago, the Illinois Environmental Protection Agency (“IEPA”), BNSF and/or any other party, regarding the investigation and remediation of the properties referred to in Exhibit A. These documents do not include documents already available on the U.S. EPA Region 5 website (<http://www.epa.gov/region5/cleanup/loewenthal/>).

The documents I am seeking include, but are not limited to notification of the site's potential hazardous releases, notes, communication, and information otherwise regarding the identification of potentially responsible parties, information received from potentially responsible parties, preliminary assessments and site inspections, records of any complaints received from the public regarding the site and of any actions taken in response, correspondence and meeting notes regarding the site between U.S. EPA Region 5 and the City of Chicago, the IEPA, Burlington Northern Santa Fe and any other related party, plans and specifications, documents developed as part of the remedial investigation and feasibility study, inspection reports and field visit memoranda; results of any studies, sampling or laboratory tests; and the records related to any administrative determinations and actions regarding emergency, removal or remedial actions for these rail line properties.

Pursuant to the Freedom of Information Act, 5 U.S.C. 552(a)(4)(A), I request a waiver of any and all fees which you incur in meeting our request. PERRO is entitled to a fee waiver because it will use the requested information in the public interest, and will not use this information to further any profit-seeking venture. In considering this fee waiver request, U.S. EPA should consider the following:

- 1) The U.S. EPA has a statutory obligation to ensure that the remediation of these properties complies with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and with the Resource Conservation and Recovery Act ("RCRA"). Therefore, all documents pertaining to the compliance with U.S. EPA's obligations under CERCLA and RCRA as administered by U.S. EPA relate to the operations and activities of the U.S. EPA.
- 2) PERRO plans to use the requested documents to evaluate whether the site is being remediated in such a manner to protect public health and safety. Such an investigation will contribute to an increased public understanding of whether U.S. EPA is adequately fulfilling its role as the regulating entity of this facility. Moreover, PERRO cannot reasonably obtain the requested information from the public domain.
- 3) PERRO plans to use the requested information to raise awareness of potential health and environmental risks in its community. In doing so, PERRO plans to disseminate the requested information to the public through its website, through its connections with community organizers, and through direct communication with community members. Therefore, PERRO will disseminate information about U.S. EPA's performance in addressing releases of hazardous substances from a facility into the environment.
- 4) The requested information is necessary for PERRO to learn whether U.S. EPA is adequately implementing CERCLA and RCRA. Moreover, the requested information is not available within the public domain.

Therefore, disclosure of the requested information will better enhance the public's understanding of U.S. EPA's operations as compared to the level of public understanding prior to disclosure of the requested information.

5) PERRO is a not-for-profit organization primarily concerned with enhancing public health and environmental quality in Chicago. Accordingly, PERRO will exclusively use the requested information in order to further that goal. PERRO does not plan to use the information to further *any* commercial interest.

As you are aware, your agency has (20) twenty working days to respond to this request. If you encounter any problems with the request, or if fees cannot be waived, please notify me of the cost of the request prior to proceeding. I am willing to consider reducing the scope of this request in order to expedite your response. Please call if you would like to discuss a reduction in the scope of the requested records.

If the request is denied in whole or in part, I request the explicit statutory basis for the denial and an explanation of the appeal process within your agency.

Please send the requested records to:

Keith Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606

I am willing to accept documents in electronic form, either on a CD or via electronic mail (kharley@kentlaw.iit.edu).

Thank you for your attention and for your anticipated cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Keith Harley".

Keith Harley
Attorney at Law

